

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

NOE HERNANDEZ-ROMERO,

Defendant.

CASE NO. 8:07CR71

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 153). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to the following portions of the PSR: ¶ 55 - lack of adjustment for the safety valve; and ¶ 17 - drug quantity and base offense level.

¶ 55 - Safety Valve

Paragraph 55 reflects a 2-level downward adjustment for the safety valve. The objection is denied as moot.

¶ 17 - Base Offense Level

The plea agreement reached pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B) recommends a base offense level of 32 based on a drug quantity of at least 500 but less than 1.5 kilograms of methamphetamine. The Court's tentative findings are that, absent unusual circumstances, the plea agreement should be upheld and the base offense level should be calculated as level 32.

IT IS ORDERED:

1. The Defendant's Objections to the Presentence Investigation Report (Filing No. 153) are granted in part and denied in part:

- a. the objections are granted as to ¶ 17 of the PSR;
- b. the objection to ¶ 55 is denied as moot;

2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 27th day of September, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge